

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Alltel Communications, Inc. for
Designation as an Eligible Telecommunications
Carrier Pursuant to Section 214(e)(2) of the
Communications Act of 1934

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2007 - 151 - C

(Please type or print)

Submitted by: Margaret M. Fox

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input checked="" type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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November 13, 2007

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Application of Alltel Communications, Incorporated for Designation
as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2)
of the Communications Act of 1934
Docket No. 2007-151-C

Dear Mr. Terreni:

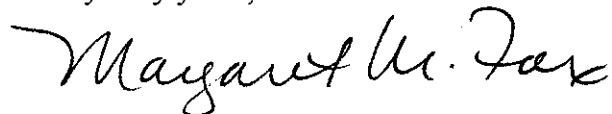
Enclosed for filing on behalf of the South Carolina Telephone Coalition, please find two (2) copies of a Brief in the above-referenced docket. By copy of this letter and Certificate of Service, all parties of record are being served by U. S. Mail with a copy of the Brief.

Please note that the attached document is an exact duplicate, with the exception of the form of the signature, of the e-filed copy submitted to the Commission in accordance with its electronic filing instructions.

Please clock in a copy of this Brief and return it with our courier.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm
Enclosures

cc: Parties of Record

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2007-151-C

IN RE Application of Alltel Communications, Incorporated)
 for Designation as an Eligible Telecommunications)
 Carrier Pursuant to Section 214(e)(2) of the)
 Communications Act of 1934)
 _____)


**CERTIFICATE
OF SERVICE**

This is to certify that I, Rebecca W. Martin, an employee with the McNair Law Firm, P. A., have this date served one (1) copy of the attached Brief in the above-referenced matter to the persons named below by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

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November 13, 2007

Columbia, South Carolina

IN RE: Application of Alltel Communications, Inc. for)
Designation as an Eligible Telecommunications) **BRIEF**
Carrier Pursuant to Section 214(e)(2) of the) (on behalf of SCTC)
Communications Act of 1934)
)

The FCC Order

Columbia: 902864

by ALLTEL Corporation ("ALLTEL") and Atlantis Holdings LLC ("Atlantis") seeking consent to transfer control of the wireless licenses, leases, domestic and international Section 214 authorizations held by subsidiaries of ALLTEL to Atlantis, and to transfer control of ALLTEL's non-controlling, general partnership interests in six FCC licensees to Atlantis. In doing so, the FCC imposed conditions upon ALLTEL relating to its receipt of federal high cost universal service funding.

Noting that "ALLTEL is currently the largest beneficiary of competitive ETC funding and accounts for approximately 29 percent of all high cost fund payments to ETCs,"² and further noting "ALLTEL's significant role in the expansion of the high cost fund,"³ the FCC found it was "in the public interest to immediately address ALLTEL's continued receipt of competitive ETC funding in the context of [the proposed] transaction."⁴ The FCC imposed an interim cap on high-cost competitive ETC support provided to ALLTEL as a condition of the transaction, with ALLTEL's funding to be capped at the level of support it received as a competitive ETC as of the end of June 2007 on an annualized basis. The cap "will apply until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years."⁵ The interim cap will be imposed on a state-by-state basis.⁶

The FCC also adopted a limited exception from the application of the interim cap condition to ALLTEL. According to the FCC, "ALLTEL will not be subject to the

² FCC Order at ¶ 9.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ The FCC stated it was imposing the cap "as recommended by the Joint Board." FCC Order at ¶ 9. The Joint Board's recommendation was for a state-based cap. Recommended Decision, In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service, WC Docket No. 05-337 and CC Docket No. 96-45, FCC 07J-1, released May 1, 2007, at ¶¶ 9-11.

interim cap condition to the extent ALLTEL (1) files cost data showing its own per-line costs of providing service in a supported service area upon which its high cost universal service support would be based, and (2) demonstrates that its network is in compliance with” the FCC’s E911 location accuracy rules.⁷ The FCC Order highlights the concern that the existing mechanism, which allows competitive ETCs to receive support based solely on the per-line support received by the incumbent LEC, provides no incentive to competitive CETCs to expand into unserved areas and, therefore, does not help to further universal service goals.⁸ The FCC found that, if ALLTEL filed its own per-line costs, ALLTEL would have an incentive to invest in areas with low population densities, which would serve universal service goals.⁹ The FCC further found that, if ALLTEL wishes to receive more high cost support than the capped amount, it would serve the public interest for ALLTEL to meet the FCC’s E911 standards immediately, rather than in 2012.¹⁰

Impact of Approval of ALLTEL ETC Application

In light of the FCC’s Order, Commission approval of the ETC Application as filed by ALLTEL Communications, Inc.¹¹ would result in no universal service funding for ALLTEL. ALLTEL received no high cost USF funding for South Carolina as of the end of June 2007. It is not clear from the FCC Order whether ALLTEL could even ask a state commission to “lift the cap” in a state like South Carolina where ALLTEL was not even designated as an ETC as of June 30, 2007. However, one thing is clear. Based on the application before it, the Commission should not grant ALLTEL’s request for

⁷ FCC Order at ¶ 10.

⁸ See *id.* at ¶ 11.

⁹ *Id.*

¹⁰ *Id.* at ¶ 12.

¹¹ ALLTEL Communications, Inc. is a subsidiary of ALLTEL Corporation, and is also referred to herein as “ALLTEL.”

designation as an ETC. Doing so would result in no funding to ALLTEL, and would set a precedent that would be harmful to the citizens of South Carolina, as discussed below. At a minimum, the Commission should defer action unless and until ALLTEL files a new application demonstrating its own per-line costs "in a supported service area upon which its high cost universal service support would be based," as required by the FCC Order,¹² or until the interim cap condition is superseded by the adoption of fundamental comprehensive universal service support reforms by the FCC.

Furthermore, it is important to note the FCC's requirement that ALLTEL's costs under the limited exception must be demonstrated in a supported service area upon which high cost support would be based.¹³ This clearly requires that costs be demonstrated on a study area-by-study area basis, because the basis for high cost support varies from one study area to another. This statement by the FCC provides further support for the finding included in the SCTC's proposed order in this matter at p. 20, ¶ 23, that the required public interest determination cannot be accomplished with a blanket statewide finding, but must take into consideration the unique characteristics of each rural telephone company service area. As the record of this proceeding shows:

Alltel takes the position that it can spend the high cost funds it receives anywhere in the State, because it has defined its study area to include the entire State. See Tr. at p. 129, line 12 through p. 130, line 1. In other words, Alltel believes current rules would allow it to take dollars received in high cost funding for its subscribers in a rural telephone company service area and spend them in downtown Columbia. See Tr. at p. 128, line 11 through p. 130, line 1. Approving Alltel's Application as filed would allow Alltel to "siphon" federal USF funding from the areas for which it is intended and divert the funding to low-cost areas where Alltel already provides service in competition with other carriers.¹⁴

¹² FCC Order at ¶ 10.

¹³ Id.

¹⁴ SCTC Proposed Order at p. 20, ¶ 23.

As we have stated, with support from the record as set forth above, a fundamental problem with ALLTEL's ETC Application is that ALLTEL failed to demonstrate, on a study area-by-study area basis, that approval of its ETC Application is in the public interest. Without such a showing, high cost support that is based on and intended for a particular rural, high-cost area could be spent by the competitive ETC in urban, lower-cost areas.¹⁵ Therein lies the fundamental public interest problem with approving ALLTEL's ETC Application, even if ALLTEL itself would receive no funding as a result. Approval of ALLTEL's ETC Application would set a precedent for future applications by other large wireless carriers operating on a statewide basis that has the potential to severely harm the public interest in South Carolina, and is contrary to the FCC's stated goal of providing incentives for competitive ETCs to further universal service by investing in areas with low population densities.¹⁶

In fact, at least one other state has expressly recognized this problem. The State Corporation Commission of the State of Kansas issued a generic order regarding federal USF certification that requires a competitive ETC to remove all expenses and investments associated with a Southwestern Bell Telephone, L.P. study area from its justification of the use of high cost federal USF support.¹⁷ In other words, since Southwestern Bell does not receive any federal high cost support in Kansas, the Kansas Commission determined that ETCs should not spend any of the high cost support they receive based on other areas to support services in Southwestern Bell's service area. The

¹⁵ It should be noted that in the other two wireless ETC cases recently approved by the Commission, this concern does not exist to the degree that it does with the ALLTEL application. In both the Hargray Wireless, LLC and FTC Communications, Inc. cases, ETC status is being sought by smaller regional wireless carriers that operate in predominantly higher-cost regions of the state. See Docket Nos. 2007-227-C and 2007-193-C (written orders pending).

¹⁶ See FCC Order at ¶ 11.

¹⁷ See Order of the State Corporation Commission of the State of Kansas, dated July 27, 2006, opening Docket No. 07-GIMT-025-GIT; see also Order dated April 13, 2005 in Docket No. 05-GIMT-112-GIT.

Kansas Commission later directed that a new generic proceeding be opened to address the issue of whether all expenses and investments by competitive ETCs in Southwestern Bell study areas should be excluded from the competitive ETC's justification of use of high cost loop support from the federal USF.¹⁸ Certain wireless carriers have objected to this requirement and the Kansas Commission's orders are currently the subject of an appeal.¹⁹

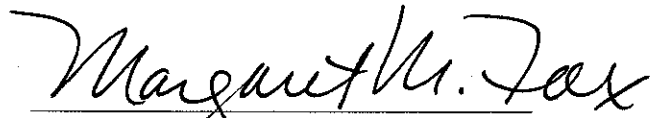
If the Commission grants ALLTEL's ETC Application on a statewide basis, without regard to the specific study areas for which funding is based and without regard to where in the State high-cost universal service funds are actually used, other large wireless carriers will apply on the same statewide basis. Although ALLTEL will receive no funding, other carriers are not bound by the conditions imposed upon ALLTEL in the FCC's Order, and the precedent will be set. The result will likely be additional competitive ETC applications for statewide authority, with carriers receiving high cost funding based on the costs of providing service to rural areas, and spending the so-called "high cost support" in lower-cost, urban areas of the State where those carriers face competition from numerous other carriers. That is certainly not in the best interest of the citizens of South Carolina, nor is it a wise use of scarce universal service funding.

¹⁸ See Order of the State Corporation Commission of the State of Kansas, dated November 21, 2006, opening Docket No. 07-GIMT-498-GIT.

¹⁹ Petition for Judicial Review of Final Agency Action, Case No. 07C1339, Division No. 7, District Court of Shawnee County, KS, filed September 27, 2007.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Margaret M. Fox". The signature is written in dark ink and is positioned above a horizontal line.

M. John Bowen, Jr.
Margaret M. Fox

ATTORNEYS FOR SOUTH CAROLINA
TELEPHONE COALITION

November 13, 2007